

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 403 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

GORDHANBHAI C PATEL

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/05/98

ORAL JUDGEMENT

(Per R.K.Abichandani,J)

The Income-tax Appellate Tribunal has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

"1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee did not derive any perquisite as a result of using the car for personal use and, therefore, the value thereof could not be added to the income of the assessee?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to the full standard deduction under section 16(1) of the Income-tax Act, 1961?

2. The relevant assessment year is 1978-79.

The assessee did not return the value of perquisite by way of car and had claimed full standard deduction. The ITO found that he was using the car for personal purpose. Running and maintenance expenses were provided by the company and the company was recovering Rs. 100/- per month from the assessee presumably for personal use of the car. The I.T.O. added the perquisite value of the car and also restricted the standard deduction allowable under section 16(1) of the Act to Rs. 1000/- under the proviso. In appeal, the AAC held that the assessee was entitled to full standard deduction. The Tribunal dismissed the Revenue's appeal following its decision dated 15.3.82 in assessee's own case. It is pointed out to us that Income-tax Reference No.266 of 1982 which was filed by the Revenue in assessee's own case, arising out of the said order of the Tribunal dated 15.3.82, has been decided on 9.11.1995 by this Court by a Division Bench comprising Hon'ble Mr. Justice Rajesh Balia and Hon'ble Mr. Justice S.K. Keshote, holding that the Tribunal had not committed any error in respect of the questions referred. It was found that the assessee was provided the car for official use and had to meet the expenses of personal use of the car which was at his disposal. It was held that there was no personal benefit in the form of permitting conveyance for personal use accrued to the assessee under the terms of employment which could be properly termed as perquisite since the estimated expenses relating to such use were recovered from the assessee. Following the decision of this Court in ITR 266 of 1982 in the assessee's own case, we answer the questions referred to this Court in the affirmative against Revenue and in favour of the assessee. The Reference stands disposed of accordingly with no order as to costs.

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